

1 AN ACT

2 RELATING TO WATER; PROVIDING FOR THE REGULATION OF LIVESTOCK  
3 WATER TANKS; AMENDING SECTIONS OF CHAPTER 72 NMSA 1978.

4  
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

6 Section 1. Section 72-5-32 NMSA 1978 (being Laws 1941,  
7 Chapter 126, Section 25, as amended) is amended to read:

8 "72-5-32. CONSTRUCTION OF DAMS EXCEEDING TEN FEET IN  
9 HEIGHT.--Any person, association or corporation, public or  
10 private, the state or the United States hereafter intending  
11 to construct a dam shall meet the requirements of filing  
12 applications for appropriations and use of water pursuant to  
13 Section 72-5-1, 72-5-22, 72-5-23 or 72-5-24 NMSA 1978. Any  
14 person, association or corporation, public or private, the  
15 state or the United States intending to construct a dam that  
16 exceeds ten feet in height from the lowest natural ground  
17 surface elevation to the crest of the dam or impounds more  
18 than ten acre-feet of water shall submit on a form prescribed  
19 by the state engineer detailed plans to the state engineer  
20 for approval before construction. If the state engineer  
21 finds that the dam design is safe, he shall approve the  
22 plans; provided that this section shall not apply to erosion  
23 control structures whose maximum storage capacity does not  
24 exceed ten acre-feet and are constructed for the sole purpose  
25 of sediment control. An erosion control structure shall not

1 impound surface water in any amount for fishing, fish  
2 propagation, recreation or aesthetic purposes, which shall  
3 require a permit pursuant to Section 72-5-1 NMSA 1978."

4 Section 2. Section 72-9-3 NMSA 1978 (being Laws 1907,  
5 Chapter 49, Section 74, as amended) is amended to read:

6 "72-9-3. STOCK WATER.--

7 A. Any stockmen or stock owners desiring to  
8 impound any of the surface waters of the state for watering  
9 of livestock shall apply to the state engineer on a form  
10 prescribed by the state engineer. If the capacity of the  
11 proposed impoundment is ten acre-feet or less, the applicant  
12 shall meet the requirements of this section. If the capacity  
13 of the proposed impoundment exceeds ten acre-feet, the  
14 applicant shall meet the requirements of filing applications  
15 for the appropriation and use of water pursuant to  
16 Section 72-5-1, 72-5-22, 72-5-23 or 72-5-24 NMSA 1978.

17 B. Upon the filing of an application pursuant to  
18 this section, if the state engineer finds that the capacity  
19 of the proposed impoundment is ten acre-feet or less, will  
20 not be on a perennial stream and will be used for watering of  
21 livestock as defined in Subsection D of this section, the  
22 state engineer shall issue a permit to the applicant to  
23 impound and use the waters applied for; provided that as part  
24 of an application for an impoundment on state or federal  
25 land, the applicant submits proof that the applicant is

1 legally entitled to place livestock on the state or federal  
2 land where the water is to be impounded and has been granted  
3 access to the site and has permission to occupy the portion  
4 of the state or federal land as is necessary for the  
5 impoundment.

6 C. This section shall only apply to impoundments  
7 constructed for the watering of livestock after the effective  
8 date of this 2004 act.

9 D. As used in this section, "livestock" means  
10 "livestock" as defined in Section 77-2-1.1 NMSA 1978 and this  
11 section applies only to the impoundment of surface water for  
12 the purpose of watering livestock. Watering of livestock  
13 does not include an impoundment of surface or ground water in  
14 any amount for fishing, fish propagation, recreation or  
15 aesthetic purposes, which shall require a permit pursuant to  
16 Section 72-5-1 NMSA 1978. In determining whether an  
17 impoundment will be used for the watering of livestock, the  
18 state engineer may consider the maximum amount of water  
19 required per livestock unit and shall take into account  
20 regional and climatic conditions that affect consumption."=====